CIVIL WRIT JURISDICTION CASE No.6538 OF 1990

MADAN MOHAN PRASAD----------PETITIONER
Versus
THE STATE OF BIHAR & ORS----------RESPONDENTS

For The Petitioner : Mr.Madan Mohan Prasad, Advocate (In Person)
For The State : Mrs.Nivedita Nirvikar, G.P.XVI
Mr.Manish Kumar, S.C.to G.P.XVI.

P R E S E N T

THE HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
THE HON'BLE MR. JUSTICE SHAILESH KUMAR SINHA

Prasad & Sinha, JJ.

Prayer of the petitioner in this writ application filed under Article 226 and 227 of the Constitution of India is to direct the respondents to allow him to cross the efficiency bar as also promotion to the higher posts i.e. to the post of Subordinate Judge, Additional District & Sessions Judge and District & Sessions Judge from due date and the consequential benefits flowing from that.

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Shorn of unnecessary details, facts giving rise to the present application are that by notification dated 5th of January, 1955, petitioner was appointed to the Bihar Judicial Service. He joined as Munsif at Hajipur on 13th of January, 1955. The High Court by its letter dated 9.5.1970 made recommendations to the State government for his dismissal. Ultimately the State government by notification dated 15th of January, 1972 dismissed him from the service. Petitioner challenged his dismissal by filing a writ petition before the Supreme Court, which was registered as W.P.No.121 of 1972. A Constitution Bench of the Supreme Court by its judgment and order dated 23rd of February, 1973 (AIR 1973 SC 1133) allowed the writ

petition and quashed the order of dismissal dated 15th of January, 1972.

After the aforesaid order of the Supreme Court, petitioner resumed his duties at Madhubani on 3rd October, 1973. However by order dated 12th April, 1974 he was suspended and a departmental proceeding was initiated against him. He challenged the order of suspension as also the initiation of departmental proceeding before this Court and ultimately matter travelled to the Supreme Court in Civil Appeal No.525 and 526 of 1978. During the pendency of the matter before the Supreme Court, another notification dated 30th of January, 1978 was issued suspending him from the date of initial order. The Supreme Court directed the High Court to withdraw the order dated 30th of January, 1978 by which petitioner was suspended with retrospective effect. However, while doing so it gave liberty to the High Court to issue a fresh suspension order after fresh and careful consideration of the question. As regards the departmental proceeding initiated against the petitioner, the Supreme Court directed its withdrawal but gave liberty to amend the charge-sheet.

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After the disposal of the aforesaid appeals, fresh departmental proceeding was initiated against the petitioner by order dated 19.8.1982. In the said departmental proceeding, the Enquiry Officer submitted its report dated 10.12.1982. Further second show cause notice was given to the petitioner as to why he be not removed from service. However, before any decision could be taken, petitioner attained the age of superannuation and retired on 31st of August, 1983.

Petitioner filed C.W.J.C.No.205 of 1984 (Madan Mohan

Prasad vs. State of Bihar & others) before this Court, inter alia, praying for quashing the aforesaid order initiating the departmental proceeding, the enquiry report as also the show cause notice. When the matter was taken up by a Division Bench of this Court on 26.2.1985, this Court was apprised of the recommendation made by the High Court to the State government for with-holding of the petitioner's pension permanently. It was further brought to the notice of the court that no decision has been taken by the State government in this regard.

Taking into account the aforesaid facts, this Court concluded that the writ application has become infructuous and while dismissing the same by order dated 10.4.1985 observed that :

> "Petitioner should wait till a final decision is taken by the State Government and may file a fresh writ application for the reliefs for which he may be entitled."

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Petitioner aggrieved by the same preferred S.L.P (Civil) No.8621 of 1985 before the Supreme Court. During the pendency of the aforesaid petition before the Supreme Court, the State government by resolution dated 11.8.1985 forfeited permanently the pension of the petitioner. The Supreme Court by order dated 25.11.1986 dismissed the aforesaid Special Leave Petition and while doing so directed as follows :

> "The Special Leave Petition is dismissed, but we would direct the State of Bihar to restore within six weeks the pensions payable to the petitioner with arrears due on the basis that he had superannuated from service from the date of superannuation. Provident Fund, Gratuity and leave salary as may be admissible to him on superannuation will also be paid to the petitioner."

In the light of the order of the Supreme Court, the petitioner was granted pension by order dated 22.6.1987. Petitioner then

approached the High Court in the administrative side, claiming promotion to the higher posts, inter alia, asserting that his service records justify grant of promotion and the consequential benefits. However, when no decision was taken, he filed C.W.J.C.No.4862 of 1987 (Madan Mohan Prasad vs. The State of Bihar & ors.) before this Court. A Division Bench of this Court by order dated 9.11.1989 disposed of the writ application directing the High Court in the administrative side to dispose of his claim. This Court observed as follows :

> "We, therefore, direct the High Court on the administrative side to dispose of the representation if any, filed by the petitioner, preferably within four months. We have passed this order on the assumption that the petitioner has filed representation. It will be open to the High Court to consider other claims of the petitioner in this writ application."

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This also did not yield any result and ultimately petitioner had preferred the present writ application.

Counter affidavit has been filed on behalf of respondent no.2, the High Court and in paragraph 9 and 10 it has put up the following plea :

> "9. That, thereafter, again the petitioner filed C.W.J.C.No.4862/87 in this Hon'ble Court agitating the grievances that after the order of the Supreme Court in Civil Appeal Nos.525 and 526 of 1978, the petitioner has filed a representation before the High Court in the administrative side long ago claiming emoluments and promotion to higher posts which has not been disposed of by the High Court. The said writ petition was, however, disposed of finally on 9.11.1989 with the direction to the High Court to dispose of the representation, if any, of the petitioner preferably within four months.
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> 10. That the representation of the petitioner was considered by the Standing Committee in its meeting dated 1.5.1987 and it was decided that matter having already been

> concluded by the decisions of this Hon'ble Court in C.W.J.C.No.2059/84 and upheld by the Supreme Court in S.L.P.(C) No.8621/85 no further action was called for."

From the plea of respondent no.2 in the paragraphs referred to above, it is evident that the High Court had declined the relief on the ground that the Standing Committee of the High Court had considered his claim in its meeting dated 1.5.1987 and further the matter has been concluded by the decision of this Court dated 26.2.1985 passed in C.W.J.C.No.2059 of 1984 and of the Supreme Court in S.L.P.(Civil) No.8621 of 1985.

Petitioner appears in person.

He submits that in view of the direction of this Court dated 9.11.1989 passed in C.W.J.C.No.4862 of 1987 the High Court in the administrative side was under an obligation to consider the claim of the petitioner, but there is nothing on record to show that any consideration was made. He points out that the reliance of the High Court on the order dated 26.2.1985 passed in C.W.J.C.No.2059 of 1984 and that of the Supreme Court in S.L.P. (Civil) No.8621 of 1985 is absolutely misplaced. He submits that neither this court nor the Supreme Court had gone into the question of grant of promotion and consequential benefits to the petitioner in the cases referred to above

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Mrs.Nivedita Nirvikar, appearing on behalf of respondent no.2 reiterates the plea taken by respondent no.2 in the counter affidavit and submits that the matter having been concluded by the order of this Court and that of the Supreme Court, petitioner is not entitled for any relief.

Having appreciated the rival submission, we find force in the

submission of the petitioner. From the plea of respondent no.2 in the counter affidavit, it is evident that its action is founded on the decision of the Standing Committee dated 1.5.1987 and the order of this Court dated 26.2.1985 passed in C.W.J.C.No.2059 of 1984 and that of the Supreme Court dated 25.11.1986 in S.L.P.No.8621 of 1985. The order of the Supreme Court has been quoted in extenso in the preceding paragraph of the judgment. As the impugned action is further founded on the order of this Court dated 26.2.1985 passed in C.W.J.C.No.2059 of 1984, we deem it expedient to reproduce the same :

> "This writ application has been filed on behalf of the petitioner for quashing a notification dated 19.8.1982 (Annexure-1) issued by the Patna High Court initiating a Departmental Proceeding against the petitioner, the enquiry report dated 10.12.1982 (Annexure-2) submitted by the District Judge, Darbhanga who had been appointed as the Enquiring Officer and notice dated 12.1.1983 (Annexure-3) issued by the Patna High Court directing the petitioner to submit his second show cause as to why he should not be removed from the service.
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> The petitioner was appointed as Munsif in the year 1955. In the departmental proceeding aforesaid several charges were framed against the petitioner which were enquired into by the District Judge, Darbhanga and on basis of the enquiry report submitted by him, this Court directed the petitioner by the impugned notice (Annexure-3) to submit his second show cause.
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> It is an admitted position that no show cause was filed on behalf of the petitioner either before the Enquiring Officer or after the service of the second show cause notice. According to the petitioner as relevant documents were not made available to him he could not file his second show cause. In the mean time the petitioner retired from service on 1.9.83. The present writ application was filed on 16.4.1984.
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> Learned Additional Advocate General, who has appeared for the Patna High Court informed the court that after retirement of the petitioner the High Court considered the question of penalty to

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> be imposed against the petitioner in view of his retirement.
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> By Memo dated 11.6.1984 the petitioner was directed to show cause as to why this Court should not make a recommendation to the State Govt. for with holding the pension of the petitioner permanently.Learned Additional Advocate General stated that no show cause was filed on behalf of the petitioner. On behalf of petitioner it was asserted that on 29.6.1984 he required certain information from the High Court in connection with the aforesaid show cause notice. Learned Additional Advocate General further stated that, thereafter, the High Court has recommended to the State Govt. for withholding the pension of the petitioner permanently, but no final decision has yet been taken by the State government in that respect.
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> Due to subsequent events, there is no escape from the conclusion that the writ application, as filed, cannot be entertained as it has become infructuous. The petitioner should wait till a final decision is taken by the State Government and he may file a fresh writ application for the reliefs to which he may be entitled.
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> This writ application is accordingly dismissed as infructuous."

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From the reading of the order of this Court as also the Supreme Court, it is evident that the matter of promotion was not an issue either before this Court or before the Supreme Court. The decision of the Standing Committee as referred to in the counter affidavit is dated 1st of May, 1987, but the direction to consider the claim of the petitioner for promotion was given by this Court on 9.11.1989. This rejection of the claim of the petitioner for grant of promotion and consequential benefits relying on the decision of this court and that of the Supreme Court is absolutely misconceived.

In that view of the matter, we are left with no option then to direct the High Court to consider the case of the petitioner for promotion

and consequential benefits bearing in mind the observation aforesaid.

We make it clear that in the writ application the petitioner has averred that his service records justify his promotion, but we have not expressed any opinion in regard to this claim. Needless to state that the High Court in the administrative side shall consider all relevant materials and come to conclusion in accordance with law.

It is relevant here to state that in the present application besides the aforesaid relief petitioner had also prayed for damages as also solatium. As the present case is not a case of Constitutional tort, he is not entitled for any relief in this regard.

As the matter is pending since long and petitioner has crossed the age of 80, we expect the High Court to consider his case expeditiously preferably within a period of three months from the date of receipt/production of a copy of this order.

In the result, the writ application is allowed with direction to respondent no.2 to consider the case of promotion of the petitioner as also consequential benefits, in accordance with law.

In the facts and circumstances of the case, there will be no order as to costs.

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(Chandramauli Kr.Prasad, J.)

(Shailesh Kumar Sinha, J.)

Patna High Court
Dated, 27th of June, 2008
N.A.F.R./ Narendra